No. 87-1636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHMOND NEWSPAPERS, INC.
and
CHARLES E. COX,

Petitioners,

v.

VERNELLE M. LIPSCOMB,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

JOHN H. OBRION, JR.
BROWDER, RUSSELL, MORRIS & BUTCHER, P. C.
One James Center, Suite 1100
901 East Cary Street
Richmond, Virginia 23219
(804) 771-9300

Counsel of Record for Respondent

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA (804) 643-7789

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Respondent, Vernelle M. Lipscomb ("Lipscomb"), respectfully requests that this Court deny the petition of Richmond Newspapers, Inc., and Charles E. Cox seeking a writ of certiorari to review

the judgment the Supreme Court of Virginia entered in this case.

STATEMENT OF THE CASE

The newspaper article giving rise to this action appeared two weeks before the start of the school year in 1981 on the front page of the Sunday edition of the Richmond Times-Dispatch.[1]

Throughout these proceedings petitioners have claimed, as they do in their Petition to this Court, that the article was not about Lipscomb, but related to a matter of general and public concern - how parents handle problems with teachers. App. at

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1 The Richmond Times-Dispatch is known as "Virginia's State Newspaper" and has a circulation of more than 225,000.

69a-70a. Yet, of the 60,000 teachers in Virginia, only respondent was mentioned.

At the time of the article, Lipscomb had been a classroom teacher for 26 years, teaching over 2,600 students. Nearly all of her students acknowledged her to be an effective, but tough teacher, and many stated that the rewards and benefits of being in her class were not always fully appreciated by them until later, especially in college. App. at 96a-109a. She was described by her department head as "the English teacher's English teacher... every school should have a Ms. Lipscomb." App. at 93a.

The article contained numerous statements that the courts below have held to be defamatory falsehoods. That

issue is not before the Court. The article variously stated that respondent was unfit, ought to be barred from the classroom, was disorganized, erratic, forgetful, unfair, unreasonable, harsh, patronizing, humiliating, demeaning, and frequently tardy or absent from class.[2] Petitioners went on to state that Lipscomb hated bright students, made students cry by verbal excess and possessed an unsatisfactory and complaint-filled record. Petitioners have attributed the defamatory falsehoods published by them to four or five students brought to petitioner Cox by one of the parents. App. at 3a-8a.

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2 Copies of the article were filed with this Court at the time of filing of the Petition.

In response to petitioners' Motion for Partial Summary Judgment, the trial court ruled that Lipscomb was a public official solely "because she is a school teacher." App. at 73a.

When the case was tried in 1983, respondent made clear that she would challenge on appeal her designation as a public official. Without objection by the petitioners, Lipscomb proffered testimony that, in her 26 years of classroom teaching, she had never been interviewed by any reporter, never participated in the budget process, never supervised other employees, never made appearances before school boards or governing bodies, never participated in determining the policies of any school board. She was, simply put, a classroom teacher. App. at 86a-92a.

Following the dictate of Rosenblatt v. Baer, 383 U.S. 75, 84 (1966), to wit: lower courts are to determine who is a "public official" in accordance with "the purposes of a national constitutional protection," the Supreme Court of Virginia unanimously concluded that Lipscomb was not a public official and that the New York Times standard did not apply to her defamation action. App. at 9a-20a.

REASONS FOR DENYING THE WRIT

The Petition should be denied for the following reasons:

1. This Court has set clear guidelines for determining the status of public officials in order to allocate a higher standard of proof in libel suits. These guidelines do not suggest an

expansion to include all public employees who have a hand in implementing public policy.

2. Lower courts have been correctly reading and applying the guidelines of this Court for determination of public officials. A case by case review of each libel verdict is not feasible, and the media is reasonably protected by the Virginia standard applicable to private plaintiffs.

3. The guidelines for public official determination relate to control of government affairs, independent public interest in the employment position and the authority to influence resolution of public issues under discussion. The label of "public official" should not be extended to classroom teachers

merely because education is deemed to be an important government service.

4. The Supreme Court of Virginia has correctly applied the rationale of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). There is no basis to expand the public official label to all public employees who might exercise influence and control over the lives of others.

I

THIS COURT'S "PUBLIC OFFICIAL" OPINIONS ARE CLEAR: THOSE WHO IMPLEMENT, BUT DO NOT FORMULATE, GOVERNMENT POLICY ARE NOT PUBLIC OFFICIALS FOR PURPOSES OF ALLOCATING A HIGHER STANDARD OF PROOF IN DEFAMATION CASES.

Critical to the trial of any libel case is the determination of the plaintiff's status as public or private citizen. The determination is made for a limited and specific purpose: to

impose or not the New York Times standard of proof.[3] Imposition of the New York Times standard produces serious consequences for the defamation plaintiff, compelling this Court to recognize that the public person designation affords a strategic protection to the media. Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974).

Petitioners' effort to expand the label of "public official" to anyone

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3 In cases involving public plaintiffs, the jury is instructed that plaintiff's burden is to prove, by clear and convincing evidence, that the defendant published a defamatory falsehood with knowledge that it was false or with reckless disregard of whether it was false or not. The Virginia Supreme Court has adopted ordinary negligence as the standard for private individuals. Gazette, Inc. v. Harris, 229 Va. 1, 325 S.E.2d 713, cert. denied sub nom., Fleming v. Moore, 472 U.S. 1032 (1985).

involved in implementing government policy distorts this Court's declarations in Gertz. That opinion noted that the New York Times standard clearly abridges legitimate state rights and exacts a high price from many deserving victims of defamatory falsehoods. But the public/private dichotomy is justified as an accommodation between the need for a vigorous press and the valid state purpose of permitting individuals to redress harm inflicted by defamatory falsehoods. As Mr. Justice Powell stated for the Court: "We would not lightly require states to abandon this purpose..." Gertz at 341.

Petitioners would have this Court believe that the rules for determining public official status are uncertain.

Yet, the Supreme Court of Virginia had no trouble in applying this Court's public official guidelines to reach a unanimous holding that a public school teacher, because of the fact of her employment, is not a public official for purposes of a libel suit.

The tracking of public official opinions from this Court reveals numerous characteristics of such positions. Yet none of the key cases even hint that the "public official" designation is to be imprinted on each and every person having a hand in implementing government policy.

There is no question that a person elected to office is a public official. The plaintiff in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), was an

elected Commissioner and had direct and exclusive supervision for the police and fire departments as well as other departments. While not elected, the plaintiff in Rosenblatt v. Baer, 383 U.S. 75 (1966), was the only supervisor of a county recreation and ski area and was directly responsible to the three elected County Commissioners in charge of all county government.

The important indicia for determining who is a public official were enunciated in Rosenblatt:

1. A public official must have substantial responsibility for the control and conduct of government affairs. 383 U.S. at 85;

2. A public official's position in government is one of significant importance and must clearly manifest an independent public interest in the qualifications and performance of the person who holds it. This independent interest must be entirely beyond and apart from the valid and strong public interest in the qualifications and performance of all government employees. Id. at 86;

3. A public official's position must be one that objectively would invite public scrutiny and discussion of the person

holding it - entirely apart from the scrutiny and discussion occasioned by any charges in controversy. Id. at 86, n.13;

4. A public official has the authority to influence significantly the resolution of the public issues under discussion. Id. at 85.

Unless the plaintiff is an elected official, Rosenblatt prescribes that defamation plaintiffs should not be labeled by groups according to the subject matter of their occupation. Petitioners argue that implementation of government policy should be the hallmark of a public official. However, that argument applies equally in the case of

any group of public employees whether in spheres of public health, finance, water and sewer or any other "important" government service. The public official determination does not turn on an arbitrary hierarchy of the relative importance of government services.

This Court in Gertz explained why a distinction is permitted between public and private plaintiffs in the first place.[4] Public officials and public figures have significantly greater access to channels of effective communi-

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4 One important grounds for making the initial distinction between public and private plaintiffs is that public officials have traditionally been cloaked with immunity or privilege against liability for defamatory words they utter in discharge of their public duties. New York Times at 282. No such protection exists for classroom teachers.

cation and a more realistic opportunity to counteract false statements. Secondly, public officials are deemed to have made a voluntary choice to involve themselves in the public arena and thus to expose themselves to greater public scrutiny. Gertz, 418 U.S. at 344.

These principles have no application to the 60,000 classroom teachers of Virginia. Whether a plaintiff is a home economics teacher in Norton, Virginia, a pre-school teacher in Highland County, Virginia (population 3,000), a teacher of computer science in Arlington, Virginia, or one of thousands of teachers in the Richmond public schools, all would be included under the rule proposed by petitioners. Classroom teachers, wherever located and however

qualified or experienced, would become public officials.

In urging expansion of the public official rule, petitioners cite no cases where courts have grappled with the public official designation for those who "implement" government policy. Predictably, confusion would abound in judicial determinations of when a position is part of the "implementation" of governmental policy. Are not all government employees, in some small measure, involved in implementing and carrying out public policy? See Hutchinson v. Proxmire, 443 U.S. 111, 119 n.8 (1979) (public official cannot be thought to include all public employees).

Petitioners have packed their appendix with documents attesting to the importance of education. It follows, they say, that since teachers are a vital cog in the field of education, all teachers are public officials when defamed. This is an obvious attempt to return to the overruled notions of Rosenbloom ignoring the individual plaintiff's position in favor of a New York Times standard for any case involving matters of public or general concern. See Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971).

Under New York Times, Rosenblatt, and Gertz, the focus in determining plaintiff's status is clearly and properly on the plaintiff's employment position, the power of the position to

resolve public issues, the relationship of the position to the control and conduct of affairs of government, and whether the position is so unique that it invites public scrutiny apart from any particular controversy or issues. These standards, supplemented by the rationale of Gertz (access to media and voluntary choice to become a public official), set meaningful guidelines for courts charged with making the determination.

To introduce a rule requiring public official status for all who implement or carry out government policy would invite uncertainty where none presently exists.

II

LOWER COURTS ARE CORRECTLY APPLYING THE PUBLIC OFFICIAL GUIDELINES OF THIS COURT.

Before announcing a so-called "split" among state courts about the status of teachers as public officials, petitioners should read again the manifest statements of Mr. Justice Powell in Gertz, 418 U.S. 323 (1974).

In effecting the balance between needs of the press and the individual's right to redress harm to reputation, Mr. Justice Powell discussed the approach suggested by Mr. Justice Harlan in Rosenbloom, 403 U.S. at 63. Mr. Justice Harlan had urged a utilitarian approach, including scrutiny by this Court of every jury verdict in every libel case to ascertain whether

First Amendment values were transcended by the legitimate state purposes.

Mr. Justice Powell pointed out the unmanageable result of such an approach with the following caveat:

> Because an ad hoc resolution of the competing interests at stake in each particular case is not feasible, we must lay down broad rules of general application. Such rules necessarily treat alike various cases involving differences as well as similarities. Thus it is often true that not all of the considerations which justify adoption of a given rule will obtain in each particular case decided under its authority.

418 U.S. 323, 343 (1974).

Those state courts which have analyzed and applied Rosenblatt and Gertz have, in well-reasoned opinions,

inevitably found classroom teachers not to be public officials. See, e.g., Nodar v. Galbreath, 462 So.2d 803 (Fla. 1984); True v. Ladner, 513 A.2d 257 (Me. 1986). Cases classified by petitioners as teacher/public official cases are, in fact, misidentified.

The Arizona case of Sewell v. Brookbank, 119 Ariz. 422, 581 P.2d 267 (1978), does not help petitioners because it relied solely on the Illinois case of Basarich v. Rodeghero, 24 Ill. App. 3d 889, 321 N.E.2d 739 (Ill. App. Ct. 1974). Basarich has been overruled in McCutcheon v. Moran, 99 Ill. App. 3d 421, 425 N.E.2d 1130 (Ill. App. Ct. 1981).

In McCutcheon, the Illinois court relied on Johnson v. Board of Junior

College District #508, 31 Ill. App. 3d 270, 334 N.E.2d 442 (1975), which had noted that teachers in public schools, by that fact, are not public officials. The court held:

> We are unwilling to place the imprimatur of public official on a school teacher...[thus] exposing these individuals to a qualifiedly privileged assault upon his or her reputation.

425 N.E.2d 1130, 1133 (1975).[5]

An Arkansas case cited by petitioners is simply inapposite. Gallman v. Carnes, 254 Ark. 987, 497 S.W.2d 47 (1973), was decided without benefit of Gertz which was decided one

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5 In like manner, Johnston v. Corinthian Television Corp., 583 P.2d 1101 (Okla. 1978), has no value to petitioners because of its exclusive reliance on Basarich.

year later in 1974. Gallman contains no discussion of whether classroom teachers are to be labeled as public officials. As dean of the state law school and as a professor, plaintiff Gallman was held, for matters of public and general concern under Rosenbloom, to be a public official.

To include New York in their list, petitioners cite two cases. In Mahoney v. Adirondack Publishing Co., 123 A.D.2d 10, 509 N.Y.S.2d 193 (N.Y. App. Div. 1986), rev'd. on other grds., 71 N.Y.2d 31, 523 N.Y.S.2d 480 (1987), a high school football coach conceded at trial that he was a public figure; moreover, there was no issue on appeal of teachers as public officials.

In Deluca v. New York News, Inc., the court declined to determine the issue because plaintiff was no longer a school teacher performing the duties of the position at the time of occurrence of the matters reported. 109 Misc. 2d 341, 438 N.Y.S.2d 199 at 204 (1981).

Because of the caveat of Mr. Justice Powell and the weakness of the cases cited by petitioners, their plea for guidance from this Court (Petition at 10) should be viewed skeptically. In a similar vein, petitioners need not "guess" about the rules applicable to comments about school teachers. Petition at 10.

Petitioners are already reasonably protected in suits by private plaintiffs. In Virginia, the trial court is

required to make an initial determination that the defamatory statement makes substantial damage to reputation apparent. And, of course, plaintiff has the burden of proving falsity. Petitioners will have ample breathing space so long as they do not act negligently in failing to ascertain facts upon which a false and defamatory statement is based. Gazette, Inc., 229 Va. 1, 325 S.E.2d 713.

III

THE IMPORTANCE OF TEACHERS IN EDUCATION DOES NOT MAKE THEM PUBLIC OFFICIALS FOR DEFAMATION SUITS.

Petitioners seek a New York Times standard for libel plaintiffs whose positions in government are "extremely important." Petition at 12.

As discussed above, the entire exercise to classify libel plaintiffs is for the purpose of determining if the New York Times standard of proof is to apply. The public/private distinction has been recognized for what it is--a reasonable accommodation between the need for a vigorous press and the right of individuals to redress harm to reputation. See Section I.

No one, least of all the respondent, disagrees with the importance of the teaching profession. Teachers do influence the lives of their students, and it is very much a mutual experience for teacher and student. See App. at 81a-86a. (Respondent looked forward to going to school to be with her students and enjoyed their visits after

graduation to share their successes and express their gratitude.)

The attempt to borrow laudatory statements about education and teachers from other cases misses the mark. It does not affect the inquiry under Rosenblatt and Gertz to know that because of the vital role of teachers, a state's exclusion of aliens from teaching certification does not violate the Equal Protection Clause. Ambach v. Norwick, 441 U.S. 68 (1979). Nor does it assist the public official inquiry to know that Fourth Amendment rules apply to a lesser degree to public school students, owing to the "commonality of interests between teachers and their pupils," and that the typical teacher has an attitude of personal

responsibility for the students' welfare as well as for his education. New Jersey v. T.L.O., 469 U.S. 325, 350 (1985) (Powell, J., concurring).

There are other cases where the value of education and the importance of teachers could be ascertained. See, e.g., Brown v. Board of Education, 347 U.S. 483 (1954) and cases cited in Ambach v. Norwick, 441 U.S. at 77 (1979). These non-defamation cases have nothing to do with the principles that animate the inquiry this Court has mandated for determination of public official status in defamation cases.

Petitioners assert that the Supreme Court of Virginia "forced" a limitation on Rosenblatt by observing the absence in the record of evidence that Lipscomb

influenced or controlled public affairs or school policy. Petition at 11.

The absence of such a showing was important, to be sure, but it was only one factor the Virginia Supreme Court considered in dealing with all of the guidelines from Rosenblatt and Gertz.[6]

Of greater importance to the Virginia Court was the lack of an independent public interest in Lipscomb's qualifications and performance beyond the public's general

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6 The Virginia Supreme Court was also impressed by the description in Gertz that public officials accept the consequences of involvement in public affairs, including the risk of closer scrutiny. But, as stated by the Virginia Supreme Court, "That is only one of the many matters a court must weigh in deciding whether a particular public employee is one classified as a 'public official' under the New York Times malice rule." App. at 13a-14a.

interest in the qualifications and performance of all teachers. App. at 20a.

Cases cited by petitioners do support strong public interest in the qualifications and performance of all teachers in public education. But petitioners have yet to address, at any level, the additional question of the public's independent interest in Lipscomb's qualifications and performance.

IV

THE VIRGINIA SUPREME COURT DID NOT MISINTERPRET GERTZ v. ROBERT WELCH, INC.

Petitioners claim that the Virginia Supreme Court erred in giving "significant weight" to Lipscomb's lack of access to the media. Petition at 14.

Further, say the petitioners, the lower court muddled the distinction between public figures and public officials. In all events, they conclude, the distinction is irrelevant and should be abandoned in favor of the following test: Does the plaintiff have power over the lives of citizens? If so, he is a public official. Petition at 15-16.

The use of Gertz by the Virginia Supreme Court was clear and correct. First of all, the Court acknowledged the guidance offered by Mr. Justice Powell in Gertz:

a. One characteristic of public officials is that they usually enjoy significantly greater access to the channels of

effective communication and, hence, have a more realistic opportunity to counteract false statements; and

b. An individual who decides to seek governmental office must accept certain consequences of involvement in public life including risk of closer public scrutiny. App. at 13a-14a.

But contrary to petitioners' claims, the court went on to say specifically:

> This is only one of the many matters a court must weigh in deciding whether a particular employee is one classified under the New York Times malice rule.

App. at 7a.

It is even more misleading to suggest that the Virginia Supreme Court has fused the public figure/public official distinction. Of course, it is irrelevant to the case at bar, since the issue was not, and indeed could not have been, raised about Lipscomb who never had public exposure of any sort.

But in footnote 2 the Virginia Supreme Court remarked unequivocally: "...different considerations determine whether a person is a 'public figure' or a 'public official' under the New York Times malice rule." App. at 14a.

In a sense, it is correct to say Gertz is a public figure case because that particular plaintiff provoked only a public figure inquiry. But the comments of Mr. Justice Powell about

public plaintiffs were in the conjunctive and pertained to public figures and public officials. 418 U.S. at 344.

Power to influence others, as a test, is no more deserving than the "policy implementation" test urged earlier in the Petition. Besides being unworkable, both tests are not-so-thinly disguised efforts to expand protection for the media at the expense of victims of defamatory falsehood.

The enlargement of the public official designation would be beneficial to the media, to be sure. But it would violate the existing "accommodation" between defamation victims and the media.

As Mr. Justice Powell stated so well:

> The need to avoid self-censorship by the news media is, however, not the only societal value at issue. If it were, this Court would have embraced long ago the view that publishers and broadcasters enjoy an unconditional and indefeasible immunity from liability for defamation.

Gertz at 341.

The Supreme Court of Virginia did not err in its reading and application of Gertz.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari to the Supreme Court of Virginia.

Respectfully submitted,

* John H. OBrion, Jr.
Browder, Russell, Morris
& Butcher
One James Center
Suite 1100
901 East Main Street
Richmond, VA 23219
(804)771-9300
Counsel for Respondent

*Counsel of Record.

A P P E N D I X

PRESENT: All the Justices

RICHMOND NEWSPAPERS, INC., et al

v. Record No. 840737 OPINION BY
JUSTICE HENRY H. WHITING

October 30, 1987

VERNELLE M. LIPSCOMB

FROM THE CIRCUIT COURT OF
THE CITY OF RICHMOND
Willard I. Walker, Judge

This action for defamation brought by a Richmond public school teacher, Vernelle M. Lipscomb ("Lipscomb"), against Richmond Newspapers, Inc. (the "newspaper"), a publisher, and its reporter, Charles E. Cox ("Cox"), arises out of the publication of a front-page article in the Richmond Times-Dispatch. The trial judge sustained a jury's award of $45,000 in punitive damages against Cox, but required a remittitur of $900,000 of a $1,000,000 compensatory

damage award against both defendants. We will affirm the reduced award of compensatory damages but reverse the award of punitive damages.

I. ISSUES

(1) Was Lipscomb, as a public school teacher, in that class of public officials which can only recover compensatory damages for defamation by establishing the constitutional malice described in the New York Times v. Sullivan, 376 U.S. 254 (1964)?

(2) If not, was negligent publication by Cox and the newspaper subsumed in the jury's finding of a publication with reckless disregard for the truth; and, if so, was the evidence in this case sufficient to support a finding of negligent publication?

(3) Was the evidence in this case sufficiently clear and convincing to support the jury's finding of publication by Cox with a reckless disregard for the truth, which Lipscomb must establish to recover punitive damages?

Collateral issues must also be resolved as to the admissibility of an expert's opinion on the standard of care, the obligation of a trial court to segregate potentially defamatory evidence from non-defamatory evidence in its instructions to the jury, and the size of the jury's verdict.

II. FACTS

The news article was in the Sunday newspaper a few weeks prior to the opening of school in the fall of 1981. The article identified Lipscomb by name

and said that certain parents and their children:

> charge that a Thomas Jefferson High School teacher is disorganized, erratic, forgetful, and unfair; that she returns graded papers weeks late and absents herself from the classroom for long periods; that she insists students stick to the rules, and flouts them herself. They say she demeans and humiliates students. The brighter they appear, the likelier they are to suffer at her hands, the parents protest.

One of Lipscomb's colleagues was quoted as saying that the teacher "might be out of her element in dealing with the students found in the honors course where most of the problems seem to have cropped up since the mid-1970's."

Dr. I. David Goldman, a physician and a teacher at the Medical College of Virginia and the father of one of Lipscomb's students, initiated the

contact with Cox. Goldman allegedly told Cox that the school's principal "has had enough complaints about Ms. Lipscomb's performance over the years to know that there was trouble."

Another parent, a minister, was quoted as saying that his son was:

> so unreasonably and harshly treated [that the parent] told both [the teacher] and her principal that she ought to be ousted from the classroom...[that] he remembers Ms. Lipscomb as "totally unbending, [a woman] of no leeway, no compromises...[she] was willing to 'settle for mediocrity' and 'conformity.' " [The minister also was alleged to have] told the school superintendent..."she is not fair, that she is hurting these kids." I told [the superintendent] "I will do all I can to get rid of her. She is bad for this system, bad for these kids."

The article referred to a third parent as "[s]ound[ing] a note heard often: that Ms. Lipscomb is inclined to

react in ways the students regard as irrational or harsh when her facts, judgment or authority are questioned. 'I think she has a bias against bright kids. Maybe she's afraid of them.' " A fourth parent described her child as one "with a long record of good grades [who] hits Ms. Lipscomb's class and winds up with a 'D.' "

The article quoted a student as saying, "She [Ms. Lipscomb] was patronizing, she was late for class, and she was missing from class a third of the time. When she was present she was so disorganized that few if any of [my] classmates understood what was expected of them. She didn't teach, I really learned nothing...her verbal excesses... caused...pain, I cried in class, I cried

outside her class." Another student was quoted as saying she was a victim of the teacher's harassment tactics, "[i]f I asked her a question, she would come back with something like, 'That's a stupid question.' " Dr. Goldman's daughter allegedly told the reporter that, "[Miss Lipscomb] seemed to hate what I represented, meaning middle-class, bright, articulate, assertive, questioning...I questioned her grades, I questioned her before the others in the class. She really didn't like it [and] she was always chipping away at our self-confidence."

A final student quoted said that the teacher's:

> verbal excess made me bawl right there in class, not once but twice. [Lipscomb's] students in the past year were always unsettled about what she would do next. She is

> just not a teacher. She would assign a test and we'd sit up half the night studying. When we got there in the morning, she'd say we won't take it. No reason. Or she'd just forget assigning us a test. She lost papers we turned in. She's totally unfitted to be in that class.

The negative comments essentially were repeated in the trial testimony of the individuals quoted. On the other hand, a number of students, teachers, and school administrators contradicted those complaints.

Cox essentially confined his investigative activities to interviews with the complaining parents and students and to telephone conferences with Lipscomb's principal and two of Lipscomb's teaching colleagues. He obtained very little information from Lipscomb and the other school employees.

The school board's attorney had advised Lipscomb and certain school administrative officials not to discuss the details of the Goldman complaints because of the law dealing with confidentiality of both student and individual teacher records and his fear of litigation over the Goldman issue with Lipscomb as a possible defendant.

III. WHETHER LIPSCOMB WAS A NEW YORK TIMES "PUBLIC OFFICIAL"

We first consider whether the trial court correctly required Lipscomb to prove publication with a reckless disregard for the truth in her claim for compensatory damages. The answer to this question hinges upon whether the trial court properly classified Lipscomb as a "public official" under the New York Times malice rule.

New York Times prohibits "a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'--that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279-80. "Actual malice" as described in New York Times might be confused with common law malice, which involves "motives of personal spite, or ill-will," The Gazette v. Harris, 229 Va. 1, 18, 325 S.E.2d 713, 727 cert. denied sub nom., Fleming v. Moore, 472 U.S. 1032 (1985); Story v. Newspapers, Inc., 202 Va. 588, 590, 118 S.E.2d 668, 670 (1961). Therefore, we will refer to such actual malice as "New York Times" malice.

The Supreme Court said in New York Times v. Sullivan "[w]e have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule." 376 U.S. at 283 n.23. In Hutchinson v. Proximire, 443 U.S. 111, 119 n.8 (1979), the Supreme Court pointed out that it "has not provided precise boundaries for the category of 'public official'; it cannot be thought to include all public employees, however." Nevertheless, that Court has left little doubt that other courts are to determine who is a "public official" in accordance with "the purposes of a national constitutional protection," Rosenblatt v. Baer, 383 U.S. 75, 84 (1966), and not by reference to state law standards.

The following United States Supreme Court cases give some guidance. In Gertz v. Robert Welch, Inc., 418 U.S. 323 1974, the Supreme Court observed that:

> The first remedy of any victim of defamation is self-help - using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials...usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater.

Id. at 344 (footnote omitted). The Gertz Court accorded private person status to an attorney who was not on the public payroll. Id. at 352. Although Lipscomb was on the public payroll, we

believe attorneys have significantly more access than teachers to the media and a more realistic opportunity to answer false charges about their competence. We must also keep in mind that Lipscomb probably could not have answered these charges fully without disclosing other students' names and records in violation of Code 522.14287 (1980).[1]

Gertz also noted that "[a]n individual who decides to seek

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1 Code § 22.1-287 provides in pertinent part:

> No teacher, principal, or employee of any public school nor any school board member shall permit access to any written records concerning any particular pupil enrolled in the school in any process...

This provision is subject to a number of exceptions not applicable here.

governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case." 418 U.S. at 344. However, that is only one of the many matters a court must weigh in deciding whether a particular public employee is one classified as a "public official" under the New York Times malice rule. [2]

Other United States Supreme Court cases give further guidance by identi-

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2 We quoted Gertz in support of our finding that a college professor on the state payroll was not a public figure in Fleming v. Moore, 221 Va. 884, 891-92, 275 S.E.2d 632, 637 (1982) cert. denied, 472 U.S. 1032 (1985). However, different considerations determine whether a person is a "public figure" or a "public official" under the New York Times malice rule.

fying and weighing the conflicting interest to be served. Rosenblatt suggested:

> The motivating force for the decision in New York Times was twofold...first, a strong interest in debate on public issues, and second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues... [I]t is clear, therefore, that the "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.
>
> Where a position in government has such apparent importance that the public has an independent interest in the qualifications and importance of the person who holds it, beyond the general public interest in the qualifications and importance of all government employees, both elements we identified in New York Times are present...

383 U.S. at 85-6.

Cases construing the "public official" standards of New York Times are legion, but we have found no federal cases concerning school teachers. The state defamation cases are split on the issue of whether public school teachers are "public officials" subject to the New York Times malice rule. [3]

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3 The following cases lend support to the proposition that a public school teacher is a New York Times "public official." See Sewell v. Brookbank, 119 Ariz., 422, 425, 581 P.2d 267, 270 (1978); Gallman v. Carnes, 254 Ark. 987, 992, 497 S.W.2d 47, 50 (1973); Basarich v. Rodeghero, 24 Ill. App. 3d 889, 893, 321 N.E.2d 739, 742 (1974); Luper v. Black Dispatch Publishing Company, 675 P.2d 1028, 1030-31 (Okla. 1983); Johnston v. Corinthian Television Corp., 583 P.2d 1101, 1103 (Okla. 1978). On the other hand, the following cases suggest that public school teachers are not New York Times "public officials." Franklin v. Lodge 1108, Benevolent and Protective Order of Elks, 97 Cal. App. 3d 915, 922-24, 159 Cal. Rptr. 131,

There has been no showing that Lipscomb, who was not an elected official, either influenced or even appeared to influence or control any public affairs or school policy. On on the contrary, the evidence shows her to have limited her activities to teaching and acting as a temporary department head of a small number of other English teachers. We also note there was no

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136-37 (1979); Nodar v. Galbreath, 462 So.2d 803, 808 (Fla. 1984); McCutcheon v. Moran, 99 Ill. App. 3d 421, 424, 425 N.E.2d 1130, 1133 (1981); Johnson v. Board of Junior College Dist. No. 508, 31 Ill. App. 3d 270, 276 n.1, 334 N.E.2d 442, 447 n.1 (1975); True v. Ladner, 513 A.2d 257, 263-64 (Me. 1986); Milkovich v. News-Herald, 15 Ohio St. 3d 292, 297, 473 N.E.2d 1191, 1195 (1984), cert. denied, Lorain Journal Co. v. Milkovich _____ U.S. _____, 106 S.Ct. 322, overruled, Scott v. News-Herald, 25 Ohio St. 3d 243, 296 N.E.2d 699 (1986); Poe v. San Antonio Express News Corp., 590 S.W.2d 537, 540 (Tex. Civ. App. 1979).

criticism of Lipscomb as an acting department head--it is all leveled at her teaching activities.

Although the article purports to raise the general question of what redress parents of a public school student may have when faced with an allegedly incompetent teacher, it named only one allegedly incompetent teacher and charged specific instances of that teacher's incompetence. Redress through the school system was available to the parents to question individual teacher competence. When Cox and the newspaper chose to assist Dr. Goldman in going beyond his normal remedy by publicizing his dispute, they became subject to the same duty of due care to ascertain the accuracy of their charges that every

citizen must assume when issuing statements, the substance of which makes substantial danger to reputation apparent.

The same reasoning applies to the defendants' contention that because the school system did not respond to Dr. Goldman's satisfaction, the conflict escalated into a public issue of evaluation of teacher competence in general and accountability of the school administration to the parents and students in particular. As Rosenblatt points out, "[t]he employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." 383 U.S. at 86; n.13 (emphasis added).

We find that the public had no independent interest in Lipscomb's qualifications and performance "beyond its general interest in the qualifications and performance of all government employees," and, therefore, conclude that Lipscomb was not a "public official" under New York Times but a private person. Accordingly, we decide that the trial court erred in requiring Lipscomb to prove New York Times malice before she could recover compensatory damages.

IV. NEGLIGENT PUBLICATION

Because the jury found the plaintiff established New York Times malice, we must next consider whether we properly may enter a judgment for Lipscomb for compensatory damages or

whether the case should be remanded for a new trial on that issue. Upon our request, the parties addressed that question in supplemental briefs filed subsequent to oral argument of the appeal. Two factors influence this determination: First, is a finding of negligence subsumed in a jury's finding of a reckless disregard for the truth? Second, if so, is the evidence sufficient to support a finding that Cox's investigation was negligent?

We described recklessness as a high degree of negligence in Griffin v. Shively, 227 Va. 317, 321, 315 S.E.2d 210, 212 (1984). As White v. Center 218 Iowa 1027, 1037, 254 N.W. 90, 95 (1934), expresses it, "[o]ne who is guilty of negligence may not be guilty of reck-

lessness, but one who is guilty of recklessness is also guilty of negligence."

We have said, in discussing the survival of common-law qualified privileges in Virginia, that the negligence standard is subsumed in the higher standard of common-law malice. The Gazette, 229 Va. at 18, 325 S.E.2d at 724. And in Great Coastal Express, Inc. v. Ellington, 230 Va. 142, 152, 334 S.E.2d 856, 853 (1985), we found that the trial court improperly imposed the higher standard of New York Times malice upon a private person seeking to recover compensatory damages for defamation. In Great Coastal Express, we conclude the higher standard of New York Times malice subsumed the required negligence stand-

ard and held the lack of a negligence instruction was harmless.

This jury found that Cox acted with reckless disregard for the truth. The jury, and not the court, determines the factual issues of negligence. Therefore, if we find the evidence is sufficient to create a factual issue of Cox's negligence, we will apply the rationale of Great Coastal Express to this case.

Because the trial court did not submit the issue of negligent defamation to the jury, it did not make the required preliminary inquiry of whether "the substance of the defamatory statement 'makes substantial danger to reputation apparent.' " See The Gazette, 229 Va. at 11, 325 S.E.2d at 722. We do so now from the record as we

did in The Gazette, 229 Va. at 28, 325 S.E.2d at 733. In this case the inquiry needs little discussion. All parties, including Cox and his editors, recognized a substantial danger of injury to Lipscomb's reputation, raising a duty to investigate the accuracy of the statements made to Cox.

A number of supervisors, a fellow teacher, and students, including some classmates of the complaining students, testified as to Lipscomb's good qualities as a teacher and contradicted virtually all the negative statements made by the persons Cox interviewed. The students who contradicted the negative testimony were all shown to have been readily available for interview in the Richmond area. While the

school authorities would not furnish Cox with the names or addresses of other students in Lipscomb's classes, the jury could have inferred from the evidence that Cox could have obtained this information from the students he interviewed but negligently failed to do so. In fact, one student gave Cox the names of some of the other students, but Cox apparently did nothing with the information.

We find that the jury had ample evidence from which to conclude that a reasonably prudent news reporter writing this article could readily have contacted a number of other students to verify (or contradict) these accusations and should have done so. Moreover, because there is no issue as to Cox's

agency, the newspaper company also is liable for his negligent performance under familiar principles of respondent superior.

V. SUFFICIENCY OF THE EVIDENCE TO SHOW NEW YORK TIMES MALICE

The jury awarded punitive damages against Cox. To sustain that award, Lipscomb, as a private person, is required to establish New York Times malice by clear and convincing proof. Newspaper Publishing Corp. v. Burke, 216 Va. 800, 804, 224 S.E.2d 132, 136 (1976). To decide if that requirement has been met, we conduct an "independent examination of the whole record," The Gazette, 229 Va. at 19, 325 S.E.2d at 727, resolving disputed factual issues and inferences favorably to the plain-

tiff. Lipscomb maintains that Cox's reckless disregard for the truth is demonstrated by a consideration of the following six factors:[4]

(1) Lipscomb says that the ill will Cox's sources bore Lipscomb was of such a character as to raise obvious doubts as to their veracity. A review of the five cases Lipscomb cites in support of this contention demonstrates the insufficiencies of this argument.

The Supreme Court in St. Amant v. Thompson, 390 U.S. 727 (1986), suggested that "recklessness may be found where there are obvious reasons to doubt the veracity of the information or the

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4 We express no opinion on the appropriateness of Lipscomb's six factors as tests for determining the presence of New York Times malice.

accuracy of his reports." Id. at 732. However, the Court in St. Amant concluded that, "[f]ailure to investigate does not in itself establish bad faith...[c]loser to the mark are considerations of [the informant's] reliability." Id. at 733. The Supreme Court then found against the claimant in St. Amant since there was no evidence of the informant's bad reputation for veracity.

In each of the remaining cases cited by Lipscomb, the reporter either had personal doubts about the informant or had been told that the informant was unreliable. Pep v. Newsweek, Inc., 553 F.Supp. 1000, 1002 (S.D.N.Y. 1983); Alioto v. Cowles Communications, Inc., 430 F.Supp. 1363, 1370-71 (N.D.Cal.

1977), aff'd, 623 F.2d 616 (9th Cir. 1980), cert. denied, 449 U.S. 1102 (1981); Burns v. McGraw-Hill Broadcasting Company, Inc., 659 P.2d 1351, 1361-62 (Colo. 1983); Stevens v. Sun Publishing Co., 270 S.C. 65, 71, 240 S.E.2d 812, 815, cert. denied, 436 U.S. 945 (1978).

Lipscomb cites no other United States Supreme Court cases that directly address the issue of ill will or bias affecting credibility. However, the case of Hotchner v. Castillo-Puche, 551 F.2D 910, cert. denied sub nom., Hotchner v. Doubleday & Co., Inc., 434 U.S. 834 (1977), held that proof of ill will or bias on the part of an informant is not sufficient in itself to impute knowledge of probable falsity of the

information. Another New York Times malice case, after reciting the obvious bias of the informants, including the ex-wife of the defamed plaintiff and the ex-husband of his present wife, concluded that this did not automatically disqualify them as legitimate sources of information. Loeb v. New York Times Communication Corp., 497 F.Supp. 85, 92-93 n.12 (S.D.N.Y. 1980).

Except for the bias suggested by their expressions of dissatisfaction with Lipscomb, there is nothing to impeach the credibility of the professor of medicine, the minister, the Richmond school teacher, and the state health department employee, who were the complaining parents, or of their four complaining children. We conclude that

there was insufficient damaging evidence about the informants themselves to provide obvious reasons to doubt their veracity.

(2) Lipscomb claims Cox's testimony demonstrates a predetermination of the facts. The most persuasive testimony we can find to support this assertion is Cox's testimony that when Dr. Goldman first called him:

> He said that he had a story he wanted to talk to me about. And he told me in general about the thing...He indicated enough to pique my interest about the thing...[H]e had considerable documentation to present in this case, an extraordinary amount, obviously of documentation already built up in this case. There was a record there for the picking up. In other words...[h]e said that he thought it had a wide public interest. I thought so myself. I was impressed [by the long document Dr. Goldman had written the school board] and I made a lot of marks on

> this thing...I'm cautious by nature and I considered this document and I considered Dr. Goldman rather carefully. I was interested in the story. I had been thinking about such a story for a long time.

Curtis Publishing Co. v. Butts, 388 U.S. 130, 169 (1967) (Warren, C.J., concurring), and Corabi v. Curtis Publishing Co., 441 Pa. 432, 466 n.20, 273 A.2d 899, 916 n.20 (1971), relied upon by Lipscomb, described "programs" conducted by the publishers to arouse people. The Butts case contained evidence of "an editorial decision...to 'change the image' of the [magazine beginning with] an announcement that the magazine would embark upon a program of 'sophisticated muckraking,' designed to 'provoke people, make them mad.' " 388 U.S. at 169. The evidence in this case discloses no such program conducted by

the defendants; it is essentially limited to a criticism of their handling of this particular article.

Lipscomb refers to three cases in support of her claim that Cox had "predetermined the facts" when he began writing the story and suppressed favorable evidence to achieve that end. A review of the facts in those cases illustrates the failure of Lipscomb's proof on this point.

In Gertz v. Robert Welch, Inc., 680 F.2d 527, 539 (7th Cir. 1982), cert. denied, 459 U.S. 1226 (1983),[5] the court said:

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5 This case was on appeal from the trial court to which it had been remanded by the earlier decision of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

> In summary, [the editor] conceived of a story line; solicited...a writer with a known and unreasonable propensity to label persons or organizations as Communist, to write the article; and after the article was submitted, made virtually no effort to check the validity of statements that were defamatory per se of [the plaintiff], and in fact added further defamatory material based on [the writer's] "facts."

In Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir.), cert. denied, 396 U.S. 1049 (1969), the reporter, before beginning any research, solicited comments from Walter Reuther about Senator Goldwater, who had recently won the Republican nomination for the presidency. The solicitation stated in part:

> I'm writing an article for [the magazine] about an old enemy of yours--Barry Goldwater. It's going to be a psychological profile, and will say, basically, that Goldwater is so belligerent, suspicious, hot-tempered, and rigid because he

> has deep-seated doubts about his masculinity.

414 F.2d at 329.

In Airlie Foundation, Inc. v. Evening Star Newspaper Co., 337 F.Supp. 421 (D.C. Cir. 1972), the reporter who wrote the defamatory story from a press release of defamatory information added his own defamatory information, also determined to be false. The evidence in this case falls far short of that necessary to establish the "predetermination of the facts" referred to in these cases.

(3) Lipscomb argues that Cox not only resolved ambiguities in the story against her but actually omitted information that was favorable. Cox did fail to report that a substantial part of Lipscomb's extended absence from class

was due to the death of her fiance, resulting in a leave of absence, which Lipscomb characterizes as a "brutal twisting of known facts." The omission of this favorable explanation for her absence may have been unfair, but we do not agree that it sufficiently evidenced either the "brutal twisting" claimed or a reckless disregard for the truth.

Lipscomb further accuses Cox of "consistently refusing to include [favorable] information which contradicted the predetermined thesis of the article." She refers only to the information Cox received from her school principal, the school board attorney, and two fellow teachers concerning her excellent qualities as a teacher and her "unblemished record," and then charges

that "[yet] nowhere in the article do these quotes appear."

Examination of the record reveals no testimony from the school principal that he told Cox that Lipscomb was an "excellent teacher with an unblemished record," as Lipscomb claims in her brief, but we note that Cox quoted him in the article as saying that she "was so highly thought of that she was promoted to department head in the past year." The school board's attorney told Cox, "There were people I talked to that thought she was a good teacher"; the article says "school authorities assert that she is a good teacher."

One of Lipscomb's colleagues testified that she told Cox that Lipscomb was "a good teacher of grammar"

and "I thought she was a good teacher" and perhaps she also said that Lipscomb "was a strict disciplinarian." Another teacher was quoted as telling Cox that Lipscomb was a "good teacher of grammar," but this teacher did not testify. The only omission we find is the failure to attribute the appraisal of Lipscomb "as a good teacher" to her fellow teachers, but that laudatory comment could be considered as having come "from school authorities."

Our review of the evidence convinces us that there is insufficient support for this claim.

(4) Lipscomb contends that the absence of deadline pressure "holds a libel defendant more accountable." While the cases cited by the plaintiff

indicate that lack of a deadline is a factor to be considered, in each case there also was other evidence of conduct demonstrating a reckless disregard for truth. See Butts, 388 U.S. at 157; Carson v. Allied News Co., 529 F.2d 206, 211 (7th Cir. 1976); Goldwater, 414 F.2d at 339; Burns, 659 P.2d at 1362 (Colo. 1983); Mahnke v. Northwest Publications, 280 Minn. 328, 340, 160 N.W.2d 1, 12 (1968).

The facts in all those cases give rise to an inference of recklessness in failing to check other sources, apart from deadline pressures. Lipscomb cites no cases, however, where absence of deadline pressure, coupled with a biased source, was sufficient to establish New York Times malice.

Indeed, Tavoulareas v. Piro, 817 F.2d 762, 797 (D.C. Cir. 1971), is to the contrary: "[T]he absence of deadline pressure is probative of nothing," supporting that statement with this footnote: "Absence of deadline pressure has been found relevant in actual malice inquiries only to negate defendants' excuses for inadequate investigation of their stories...No such situation is presented here." 817 F.2d at 797 n.52 (citation omitted). Notably, the Tavoulareas informant was a biased source--the plaintiff's estranged son-in-law. If the evidence available to Cox at the time of writing was legally insufficient to require a further investigation before publication, additional time to do such an investigation has no legal significance.

(5) Doubts of the newspaper staff members as to the accuracy of the story were said to be evidenced by their delay in publishing it until Cox return from a vacation. Cox testified that upon his return his editors had fears and reservations because "[t]hey just wanted to be careful journalists. They wanted to be very, very sure of the sources on this...they wanted their hands held, to be reassured I had done all my work, as an employee, and I was able to tell them, I assume convincingly, that I had done my work, [they] wanted to be sure that what [I] had gotten was accurate and the sources were reliable." This is hardly "sufficient evidence to permit the conclusion that [either of] the defendant[s] in fact entertained serious

[doubt] as to the truth of his publication." St. Amant, 391 U.S. at 731; cf. Tavoulareas, 817 F.2d at 793-94 (an editor's statement, "[i]t's impossible to believe" that the plaintiff set up his son in business in derogation of his fiduciary duty, coupled with a biased source, may have sufficed to show a reckless disregard for the truth if it had referred to a false statement; however, the court found the statement was essentially true).

(6) The evidence is insufficient to support Lipscomb's final charge that Cox threatened and intimidated her, the school board's attorney, and the principal, the only favorable sources cited by her. On the contrary, the

evidence shows that Cox was trying to persuade them to give Lipscomb's side of the controversy.

The school board's attorney testified that Cox told him if "the school system did not make a formal response to this situation, that the article was going to be written and it was going to not look good for the school system or Ms. Lipscomb...he was going to write a story and it was not going to reflect on the school system or Ms. Lipscomb because the implication was the school board would not respond to that."

Lipscomb, when asked if Cox had said, "You really ought to respond to the charges" or words to that effect, replied, "Words to that effect, but it was more or less like an intimidating

thing, like 'you'd better talk to me.' He didn't say, 'You ought to talk to me.' It was more or less an intimidation thing...I just could detect something like a threat in his voice." Cox himself said, "I tried, I tried very hard to tell [Lipscomb] that these were serious charges. And it seemed to me that she ought to respond."

The school principal testified that when he refused to give his views about Lipscomb in connection with the Goldman complaints, Cox "indicated the article would be written with or without my comments, which didn't set too well with me either...he was going to write it with or without my input. He was trying to get my side along with whatever information he had."

We conclude that, even with the bias shown, no one of the six elements charged is legally sufficient to justify a jury's finding of a reckless disregard for the truth. We equally are convinced that a consideration of all these elements as a group demonstrates the same inadequacy. Although we are satisfied that the evidence was sufficient to create a factual issue of negligence, as stated above, we find it insufficient to establish New York Times malice by clear and convincing evidence. Accordingly, we will reverse the award of punitive damages against Cox.

Lipscomb assigned cross-error to the trial court's refusal to submit the issue of the newspaper's liability for punitive damages to the jury. We need

not decide that issue in view of the preceding discussion.

VI. ADMISSIBLITY OF EXPERT WITNESS TESTIMONY

The defendants contend that the trial court erred in excluding evidence from an expert witness, a nationally known journalist, proffered on the standards for investigative reporting. The excluded evidence was an opinion that Cox:

> followed the precepts of fair play and accuracy throughout this and did all of the things that a person should do, that is he took the accusation against the public figure and the public institutions and pursued them to obtain documentation and to also go to the individuals involved and give them every opportunity to explain their side of the accusations [and therefore did not depart] from the standards of journalism relating to investigative reporting.

The standards were described by the witness as:

> developed over a period of years and involve basic accuracy and fairness in articles and the mechanical procedures that will result in accuracy and fair play for all of the people in the stories.
>
> From that standpoint, what one usually starts with is a brief accusation or criticism of a public official, and then you try to make a determination whether there is corroboration for that, use of public records, the use of a wide range of other devices and, in the end, go to those who will be criticized and ask those individuals what their response is to the criticism.

We conclude that the trial court did not err in excluding this evidence for a number of reasons.

First, the issue before the jury was a simple one, essentially whether Cox should have conducted further interviews with other students and parents to meet the standard of due care and to avoid acting with reckless disregard for

the truth. Coppola v. Commonwealth, 220 Va. 243, 257 S.E.2d 797 (1979), cert. denied, 444 U.S. 1103 (1980), states that the rule:

> [E]xpert testimony concerning matters of common knowledge or matters as to which the jury are as competent to form an opinion as the witness is inadmissible. Where the facts and circumstances shown in evidence are such that men of ordinary intelligence are capable of comprehending them, forming an intelligent opinion about them, and drawing their own conclusions therefrom, the opinion of an expert based upon such facts and circumstances is inadmissible.

Id. at 2562, 257 S.E.2d at 803-04. An annotation on this subject includes the three cases cited by the defendants. Annot. 37 A.L.R.4th 987 (1985). It suffices to say that many more cases discussed in this annotation reach the contrary conclusion. In virtually all these cases the issue turned on how much

investigation the reporter should have made before publishing a statement which subsequently turned out to be false, and most of the courts held that a jury was just as capable as an expert of deciding whether the reporter was negligent in failing to make further inquiry. We find that a jury in this state is as competent as any expert to form an intelligent and accurate opinion as to whether a reporter should have conducted additional investigations.

Second, the defense proffered this evidence in an effort to establish a "journalistic malpractice test." We think the adoption of a "journalistic malpractice test" would be inappropriate for a number of reasons:

(a) While responsible newspapers serve many worthwhile objectives, profit is an important consideration. Startling, sensational stories tend to sell more newspapers than dull, factual stories. Thus, there is an inherent conflict of interest when a journalist is required to draw inferences from news items. It seems imprudent to permit media experts to set a standard under these circumstances.

(b) The evidence here does not establish that journalists are required to have special education for their profession,[6] as engineers, doctors, lawyers, or certified public accountants

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6 We note that Cox admitted he took no undergraduate courses in journalism. He received his college degree in economics.

must, nor have they acquired knowledge, training, and experience unique to certain trades focusing upon scientific matters, such as electricity, blasting and the like, which a jury could not understand without expert assistance.

(c) The adoption of such a standard might mean that there could be no recovery unless a media expert testified that the conduct did not meet the standard of care in the journalistic community. See Martin, 549 P.2d at 92. We decline to impose such a requirement.

VII. SEGREGATION OF POTENTIALLY DEFAMATORY MATERIAL FROM MATERIAL OBVIOUSLY NOT DEFAMATORY

Both parties agreed that the jury should see the entire article to determine the context of the particular

defamatory statements. However, Cox contends the court should have winnowed out obviously non-defamatory material in its instructions to the jury.

There are two independent reasons why we find this contention has no merit:

(1) We assume the jury followed the trial court's instructions limiting Lipscomb's right of recovery to defamatory statements of fact.[7] The article contained not only potentially defamatory statements but also statements of opinions, laden with factual content.[8]

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7 No party tendered an instruction informing the jury that it could not award damages for expressions of opinion nor were instructions tendered setting forth how statements of opinion could be distinguished from statements of fact.

8 Many of the potentially defamatory statements about Lipscomb were

It was the jury's function to determine which statements were defamatory statements of fact about Lipscomb, taking into consideration the entire background of the case and the context in which those statements were made. See Zayre, Inc. v. Gowdy, 207 Va. 47,

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intermingled with what were arguably statements of opinion. However, the jury could consider those opinions as "laden with factual content." See Ollman v. Evans, 750 F.2d 970, 982 (D.C. Cir. 1984), cert. denied, 471 U.S. 1127 (1985); cf. Chaves v. Johnson, 230 Va. 112, 118-19, 335 S.E.2d 97, 101-02 (1985). It is this feature which distinguishes this case from Ollman and Chaves. In Ollman the majority found the article was confined to statements of opinion that primarily depicted Ollman as a political activist and questioned his intentions as a potential head of a political science department of a college. 750 F.2d at 990-91. Similarly, in Chaves one architect merely characterized a competing architect as inexperienced and as charging excessive fees. 230 Va. at 118-19, 335 S.E.2d at 101.

50, 147 S.E.2d 710, 713 (1966); Powell v. Young, 151 Va. 985, 994, 144 S.E. 624, 626 (1928).

(2) There is no duty upon a trial court to segregate potentially defamatory from non-defamatory material in granting instructions to the jury. See Harvey v. Epes, 53 Va. (12 Gratt.) 153, 184-85 (1855). In Harvey a general motion was made to exclude all parol evidence tending to alter, vary, explain, or add to a written contract between the parties but the trial court refused to do so. On appeal, this Court said:

> [s]ome of the parol evidence was certainly admissible, and therefore it would have been improper to have excluded all. It would have been just as improper to have instructed the jury in general terms to disregard all parol evidence tending to alter, vary, explain or add to the written contracts mentioned in

> the said bill of exceptions. Nor was the court bound to sift the mass of evidence in the case, and determine which would alter, vary, explain or add to the written contracts, and which would not. It was the duty of the parties moving the instruction to point out the particular evidence objected to; and not having done so, the court, on that ground, was justifiable [sic] in refusing to give the instruction.

Id.

VIII. ALLEGED EXCESSIVE DAMAGES

The defendants charge that the verdict for $1,000,000 in compensatory damages and $45,000 in punitive damages was the result of "passion, prejudice, or a misconception of the law" and that the verdict, therefore, should have been set aside in its entirety.

First, they argue that racial prejudice influenced the size of the verdict. Before the trial began, the trial

court recognized that racial considerations might influence the outcome. However, after the trial ended, the court found that those considerations had not influenced the outcome, made a written finding that the jury had shown no "bias or improper motive in making its decision," and refused to set aside the compensatory damage verdict on that ground. Our review of the record demonstrates that the trial court did not abuse its discretion in making this finding.

Second, the defendants contend that the size of the verdict establishes that prejudice, passion, or a misconception of the law influenced both the amount awarded and the jury's determination of liability. While we have found the

evidence insufficient to show a reckless disregard for the truth by Cox, it is more than ample to justify a finding of negligence in his failure to interview other students and school officials before publishing manifestly damaging statements about Lipscomb. Additionally, the trial court failed to find those factors which might indicate that an excessive damage award tainted the finding of liability.

This case is unlike Rutherford v. Zearfoss, 221 Va. 685, 272 S.E. 2d 225 (1980), where the trial court expressly found that sympathy for the plaintiff influenced the finding of liability in a medical malpractice claim. Nor is this case like Rome v. Kelly Springfield Tire Co., 217 Va. 943, 948, 234 S.E.2d 277,

281 (1977), where there was no clear preponderance of the evidence in favor of either party and the damage award was in the exact amount of the lost wages and medical expenses despite the plaintiff's serious and permanent injuries, suggesting that doubt about the liability issue materially influenced the jury.

The defendants cite Ford Motor Co. v. Bartholomew, 224 Va. 421, 297 S.E.2d 675 (1982), but the decision actually supports the action taken by the trial court in this case. There, the jury returned a plaintiff's verdict for $50,000. The defendant moved the trial court to set the verdict aside and order a new trial on all issues, contending that the verdict was so excessive as to

demonstrate the jury had misunderstood the facts and the law. The court refused to set the verdict aside, holding "there is no reason to conclude that an excessive damage award tainted the legitimacy of the jury's finding on liability." Id. at 434-35, 297 S.E.2d at 682. The court did order the plaintiff to remit $33,500 of the award, to which action the plaintiff assigned cross-error. We affirmed across the board. We cannot find in the present case that the trial court abused its discretion in concluding that the jury's finding of liability was not tainted by the excessive award of damages.

The defendants also complain that the size of the final awards - $100,000 in compensatory damages and $45,000 in

punitive damages - was "so out of proportion to the damage sustained as to be excessive as a matter of law." We need not consider further the punitive damage award since we have set it aside.

Cox compares this case to The Gazette where we set aside a jury's award of $100,000 for compensatory damages for defamation, finding it to be excessive as a matter of law. 229 Va. at 48, 325 S.E.2d at 745. Unlike the defamed plaintiff in The Gazette, Lipscomb was substantially and adversely affected by this defamatory publication.

The minister in her church said that she was "totally destroyed and distraught, was withdrawn and afraid... she was not the self-confident and assured...person she had been." He also

said, "She has found it difficult to even attend the worship services let alone participate in the church services [as she formerly did]." Her supervisor at work says she has changed from a "proud, confident person" to one who avoids crowds, does not mingle with people, "has like crawled into a little shell, lost faith in almost anything and everything."

Lipscomb herself said she was unable to read the article without crying, she felt her whole career and life had been destroyed. Lipscomb says she now is very ill at ease in crowds, never knows what poeple are thinking, and "forever live[s] in fear when I go to school and in the classroom that another Dr. Goldman...will crop up and

flash that article in my face." We find that a jury could infer substantial emotional injury from this evidence.

We must necessarily accord the trial court a large measure of discretion in remitting excessive verdicts[9] because it saw and heard the witnesses while we are confined to the printed record. Bassett Furniture v. McReynolds, 216 Va. 897, 912-13, 224 S.E.2d 323, 332-33 (1976). We do not find from this record that the trial judge plainly abused his discretion in setting aside the award of $1,000,000 in compensatory damages or in imposing a remittitur of $900,000 in that verdict.

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9 We are not required to make an independent review of the award of compensatory damages in this defamation case. The Gazette, 229 Va. at 20, 325 S.E.2d at 728.

He carefully reviewed the evidence in a written opinion, considering "factors in evidence relevant to a reasoned evaluation of the damages incurred," id. at 912, 224 S.E.2d at 332, and we will not disturb that finding because "the recovery after remittitur bears a reasonable relation to the damages disclosed by the evidence." Id.

Lipscomb assigns cross-error to the reduction. We believe an award of $1,000,000 clearly would have been excessive. However, the evidence does not demonstrate that the trial court abused its discretion in reducing the award to $100,000.

For reasons assigned, we will affirm the judgment of $100,000 for compensatory damages against both

defendants, will reverse the judgment of $45,000 for punitive damages against Cox, and will enter a final judgment of $100,000 against both defendants.

Affirmed in part,
reversed in part,
and final judgment.

Stephenson, J., with whom Thomas, J., joins, concurring in part and dissenting in part.

RICHMOND NEWSPAPERS, INC., ET AL.

v. Record No. 840737

VERNELLE M. LIPSCOMB

Stephenson, J., concurring in part and dissenting in part.

I concur with the majority's holdings that (1) Lipscomb was not a public official, (2) punitive damages should be denied because the evidence is insufficient to support the jury's finding that Cox acted with "reckless disregard for the truth," and (3) the trial court properly excluded expert testimony.[1] However, I disagree with

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1 I also agree that the trial court properly submitted the entire article to the jury because the statements of opinion contained in the article were "laden with factual content," Ollman v. Evans, 750 F.2d 970, 982 (D.C. Cir. 1984), cert. denied, 471 U.S. 1127 (1985). I would make clear, however,

the majority's decision to enter final judgment in favor of Lipscomb on the basis of negligence. In my opinion, the majority's ruling on this point is logically flawed.

The majority relies upon Great Coastal Express v. Ellington, 230 Va. 142, 334 S.E.2d 846 (1985), as authority for the proposition that a finding of negligence is subsumed in a finding of reckless disregard for the truth. At trial, the plaintiff in Great Coastal was required to prove New York Times malice. On appeal, however, we held that the appropriate standard was negligence. We then pointed out that

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that "[i]t is for the court, not the jury, to determine as a matter of law whether an allegedly libellous statement is one of fact or one of opinion." Chaves v. Johnson, 230 Va. 112, 119, 335 S.E.2d 97, 102 (1985).

because plaintiff had successfully proved the higher standard, he had necessarily proved negligence. Great Coastal therefore is authority for the proposition that if a plaintiff proves reckless disregard for the truth, he also proves negligence.

Great Coastal cannot serve as authority for the majority's decision in this case, however, because Lipscomb did not successfully prove reckless disregard for the truth. It is one thing to say that proof of a higher standard includes proof of a lower standard. It is quite another thing to say that failure to prove a higher standard includes proof of a lower standard.

Once the majority decided that Lipscomb failed to prove reckless

disregard for the truth, the jury's verdict became null and void. Nevertheless, the majority seizes upon this void verdict as the predicate for ruling, as a matter of law, that negligence was proved. In my opinion, the majority has invaded the province of the jury.

In a case of this complexity, we should permit a properly instructed jury to decide the issue of negligence. Accordingly, I would remand the case for a new trial.

Thomas, J., joins, concurring in part and dissenting in part.

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND
DIVISION I

CASE NO. LF-1112

Vernelle M. Lipscomb,

Plaintiff,

v.

Richmond Newspapers, Inc.,
and
Charles E. Cox,

Defendants.

MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, defendants move the Court for an Order that plaintiff shall be required to prove, by clear and convincing evidence, that the August 16, 1981, article entitled "Questions About Teachers Hard

to Pursue," which is the subject of this action, was published by defendants with knowledge that it was false or in reckless disregard of the truth. As grounds for this motion, defendants state:

1. Plaintiff is a public official.

2. The August 16, 1981, article that is the subject of this action reports on a matter of public or general concern.

RICHMOND NEWSPAPERS, INC.
and CHARLES E. COX

By Counsel

/s/ David C. Kohler
Alexander Wellford
David C. Kohler
Christian, Barton, Epps,
Brent & Chappell
1200 Mutual Building
909 East Main Street
Richmond, VA 23219
804/644-7851
Of Counsel

CERTIFICATE

I certify that a true copy of the foregoing Motion for Partial Summary Judgment was hand-delivered on the 27th day of June, 1983, to John H. OBrion, Jr., Esquire, and Kenneth X. Warren, Esquire, Browder, Russell, Morris & Butcher, 1200 Ross Building, Richmond, Virginia 23219, counsel to the plaintiff herein.

/s/ David C. Kohler
David C. Kohler

RULING OF CIRCUIT COURT OF CITY OF RICHMOND GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND
DIVISION I

VERNELLE M. LIPSCOMB,	Case No. LF-1112
Plaintiff,	
v.	
RICHMOND NEWSPAPERS, INC. and CHARLES E. COX,	
Defendants.	

TRANSCRIPT OF PROCEEDINGS
HELD BEFORE THE HONORABLE WILLARD
I. WALKER, JUDGE

July 18, 1983

Richmond, Virginia

* * * *

THE COURT: Well, counsel, I am going to rule on this, then we are going to have time for you all to get a cup of coffee and see what the agenda will be for the rest of the time we will have.

And I am going to rule that a school teacher, that the plaintiff in this case, and because she is a school teacher, not because she is a department head, although I recognize that as the case, is a public official. And, therefore, that the requirement should be the New York Times standard, particularly, as a media defendant. I don't know that it makes any difference.

I am also going to rely on the Sanders case that the Supreme Court of Virginia meant to apply the constitutional malice standard to areas

involving public or general concern, and that freed of the restraints or restrictions of the Rosenbloom v. Metromedia, Inc., they would nonetheless apply the same standard there as they would to public officials and public figures. And this is a public or general concern area by virtue of Sanders.

We don't know that the Supreme Court would do that, however, I believe that it would. So on two bases I would find this to be a case where constitutional malice must be shown.

We take a brief recess now.

* * * *

[EXCERPTS FROM TRIAL TRANSCRIPTS]

VIRGINIA:

IN THE CIRCUIT COURT OF
THE CITY OF RICHMOND
DIVISION I

VERNELLE LIPSCOMB

Plaintiff

v.

RICHMOND NEWSPAPERS, INC.,
AND CHARLES COX

Defendants

TRANSCRIPT OF PROCEEDINGS

August 8-12, 1983

BEFORE: The Honorable Willard Walker,
Judge

* * * *

[Vernelle Lipscomb's Teaching History]

AFTERNOON SESSION

DIRECT EXAMINATION

BY MR. OBRION:

Q You are Ms. Vernelle Lipscomb?

A Yes, I am.

Q Where do you live, Ms. Lipscomb?

A 113 East 37th Street, Richmond, Virginia.

Q Who lives with you?

A I live with my father.

Q What's his name and how old is he?

A His name is Dewey Lipscomb and he is 85 years old.

Q Ms. Lipscomb, it's not polite to ask a lady how old she is but would you tell the jury when you were born, please?

A I don't mind. I am fifty-two years old.

Q Where were you born, please?

A I was born in Richmond, Virginia.

Q Where did you attend high school?

A I attended high school in Richmond, Virginia, Armstrong High School.

Q And in what year did you graduate?

A In 1947.

Q Upon graduation from high school did you go directly to college?

A No, I did not.

Q What was the reason for that?

A My family was not financially able to send me at that time.

Q Did there come a time you did go to college?

A Yes.

Q What college?

A Morgan State College in Bolton, Maryland.

Q What year did you graduate from Morgan State or approximately the year if you remember?

A 1955.

Q And what was your major?

A I majored in English.

Q What was your first teaching position after you graduated from Morgan State?

A My first teaching position was as a long-term substitute at Benjamin Briggs in Richmond.

Q And following substituting you began teaching where?

A Jackson Burley High School, Charlottesville, Virginia.

Q Did you teach at Maggie Walker High School?

A Yes, I did.

Q Could you give us the year you started there and the year you ended at Maggie Walker?

A I started teaching at Maggie Walker in 1959, and I taught there until integration occurred in 1971. Then I went to Thomas Jefferson High School, and I'm currently there now.

Q You have been at Thomas Jefferson since 1971?

A Yes.

Q Now have you taken additional educational courses since you graduated from Morgan State and tell the jury in general what they are and what they consist of?

A I have taken courses in English, education courses, they were taken at the University of Virginia. These were courses taken towards a Master's degree in education in the teaching of English. I did my Master's degree at the University of Virginia in education and the teaching of English. Thereafter, I pursued courses in counseling. I have earned 22 hours towards a Master's degree in that.

Q Now you have taught since 1956, is that correct?

A Yes.

Q Could you estimate for us the number of students that you have taught since 1956?

A I have taught roughly two thousand six hundred. From two thousand six hundred to three thousand students.

Q What kinds of classes have you taught, at what grade levels and what subject matter?

A I have taught from grades nine through twelve in English courses, all phases, one through five. Five means honors courses.

Q Was that true at Maggie Walker and also at Thomas Jefferson - those grades levels and those curriculum levels in grammar and literature and English?

A Yes.

Q Ms. Lipscomb, would you please tell the jury hov you got into education and what motivated you to become a teacher, please?

A Since I vas a little girl I always wanted to become a teacher. I remember distinctly when I used to ask

my mother to have my brother sit quietly or just take a seat so I could teach them. I always wanted to be a teacher. I worked with students, teenagers in Sunday school; I taught Sunday school which I enjoyed enormously, and by doing this, I became closer to students, to teenagers, and this was another thing that served and encouraged me to go on to be a teacher.

Q Ms. Lipscomb, I'd like for you to concentrate primarily on your teaching experiences since the mid-1970's, and I'd like you to tell this jury something about your relationship to the students that you have taught.

A I'd always looked forward to going to school and greeting my students and being with them, and it was a joy to

watch them progress and become successful in life or to branch out and find avenues in which they could better themselves.

I'm particularly glad to see them or to hear about their success. They will come back and tell me about what they are doing. If they are in college they will come back and say, "Thank you, Ms. Lipscomb" and they indicate their gratitude for their experience in having been in my classroom.

Some will come with gifts, some have brought their little children back to see me, and it's just always a joy to see the students whom I have taught and to see they are progressing well and to hear them say, "I remember the things that you have taught me, all that you have done has not been in vain," so it is a joy to get that.

Q What particularly is the role that teaching has in your life? Can you explain how big a part it has in your life?

A Yes. Teaching has a great part in my life. My family, my church, and teaching are the greatest parts of my life.

Q Ms. Lipscomb, I'd like to ask you about some things in this newspaper article, particularly I'd like to ask you about the comment on the second page of the article about your willingness to settle for mediocrity. Tell the jury about the standards you set and whether mediocrity is one of those?

A Certainly not, not mediocrity. I have always instilled in my students that they must work to their level best and always do the best that they can,

and certainly mediocrity is not the best they can do. And I have impressed this upon them. I have tried to make them strive for hard work and be the best of whatever they are, do the best of your ability. Mediocrity certainly did not enter into that realm.

Q The classes you have taught and the individual students, have they responded or reacted to you at the end of the year, and will you tell the jury what the classes have done from time to time?

A From time to time I have at the end of the year, students as a class have given me gifts. I'm wearing a gift now, a cross that one of my classes gave me as a gift of appreciation. I never take it off. I always wear it.

I have china a class has given me. I have many gifts that classes have given me. Through all of them, I do not get a gift through all classes but most of them will give me gifts like a cross or umbrella or gifts of appreciation. I do get gifts from students, individual students with little notes saying, "just to thank you."

* * * *

[Proffered Testimony of
Vernelle M. Lipscomb]

MR. OBRION: I'd like to recall Ms. Lipscomb. It relates solely to whether or not she is a public official, a matter upon which Your Honor has already ruled, and I simply want it in the record for whatever future course of action this case might take.

THE COURT: Ms. Lipscomb, will you come back up?

DIRECT EXAMINATION

BY MR. OBRION:

Q Ms. Lipscomb you are still under oath, and I want you to respond to these questions based on your teaching career and your present job as a schoolteacher.

Have you ever sought or campaigned for any public office?

A No, I have not.

Q Have you ever sought a nomination of any political parties or received a nomination of a political party on an election?

A No.

Q Have you ever been interviewed for television, radio or in the newspapers other than the matter we are here talking about?

A No, I have not.

Q Have you ever appeared or held or called a press conference?

A No.

Q Have you ever had any regular dealings with a radio, newspaper, or television?

A No, I have not.

Q Have you held an elected office?

A No.

Q Do you have any participation in the determination of a budget process for the Richmond Public Schools or the Department of Communicative Arts or something in the City?

A No, I do not.

Q Have you ever supervised a federal or state regulations program?

A No.

Q Have you ever made application for federal grants?

A No, I have not.

Q Have you ever supervised clerical personnel in the school system?

A No.

Q Have you ever interviewed applicants eligible for federal or state programs?

A No.

Q Have you ever supervised payroll grants or loans?

A No.

Q Have you ever been a consultant to the Richmond Public Schools or any other school?

A No.

Q Have you ever appeared before the Richmond Public School Board?

A No.

Q Have you ever been requested to appear before the School Board?

A No.

Q Have you ever appeared before City Council?

A No.

Q Have you ever appeared before any public forum other than your church that you know of?

A No.

Q Have you ever been a representative to any teachers' association or public employees union?

A No.

Q Have you ever served on any standing committee of the Virginia Education Association or the Richmond Education Association?

A No, I have not.

Q Do you direct or supervise any employees of the Richmond School Board?

A No.

Q Do you have anything to do with the preparation of the annual calendar of the Richmond school system?

A No.

Q Have you ever met with or talked with the City manager, the mayor or members of City Council?

A No.

Q Do you have anyhthing to do with assignment of student classes or the schedules of classes?

A No.

Q Do you have anything to do with monitoring personal leave requests of employees?

A No.

Q Are there any newspaper or magazine articles about you personally and as a teacher of which you are aware?

A No.

MR. OBRION: That is the only proffer.

THE COURT: Did you want any inquiry in?

MR. WELLFORD: No, Your Honor.

* * * *

[Percy Hunt]

Q Can you tell the jury her reputation as a teacher and the specific things you observed about her teaching methods?

A When I first arrived at Thomas Jefferson was when I first met her.

Even then she had a reputation for being the English teacher's English teacher, so to speak. Those of us who were new in teaching sought her advice in certain areas, and as far as her methods of teaching are concerned, she seemed to be very well organized and efficient in the performance of her duties.

Q Did you observe her in a classroom situation with students?

A Oh, yes, I--at a later time I had occasion to make observations of that, and in the classroom, yes.

Q Tell us what you could observe about how she interacted with students that you saw?

A Well, first of all her class was extremely orderly. There would be communications and responses between the students and Ms. Lipscomb; there was

also an endless amount of learning. There was not playing or joking around. Everybody was serious just the way she was.

Q Did you see handouts she may have used and did you use those yourself?

A Yes, I did. I made up a handout myself for some of my classes, and I consulted with her in the formation of my own handouts, and I had in my files a copy of one of her handouts which dealt with book reviews.

Q Now you mentioned her interaction with students in class. What about after class or at lunch period? Did you see any students interact with Ms. Lipscomb after the classroom period?

A Yes, very frequently. After school it was a common practice for students to show up in her room but most, more especially for a teacher who was so demanding and exacting, it was kind of a surprise to see so many, so many students return to her room during their own lunch periods to discuss things with her.

Q Now Mr. Hunt, you were on the English faculty from 1975 until you retired, and did you have students who have come to you after having been taught by Ms. Vernelle Lipscomb in English?

A Yes.

Q Could you tell us your observation of those students in terms of what kind of students they were?

A They were for the most part very well versed in grammar, their writings were usually more precise, they showed that they had been trained very well. Usually you could point out who had come through her class. There were, of course, other students that did not come from her that did well, but invariably her students did very well.

* * * *

[George Bowser]

GEORGE BOWSER, being duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. OBRION:

Q Would you please state your name?

A George Bowser.

Q At Maggie Walker did you have Ms. Vernelle Lipscomb as a teacher?

A Yes, I did in '62.

Q Could you tell us your impressions about Ms. Lipscomb as a teacher?

A At Maggie Walker, one of the teachers I had at the time was Ms. Lipscomb. She taught me tenth grade English. Being a little student in high school just coming from middle school, I was a little excited, but I also was a little scared, and one of my anxieties probably was the fact I had been assigned English, I was assigned the English from Ms. Lipscomb. She had a reputation that followed her.

She had a reputation of being an excellent teacher and of being a very

demanding teacher, being one who demanded we give our best at all times, one who would not tolerate any foolishness, and I still had a whole lot of foolishness about me, but I knew when we went into the classroom I could no longer do this playing I would do. I had been rather fortunate because I could laugh and talk and still do my work. Some students couldn't do that, but I could laugh and talk and joke and still do my work and make an "A" or make a "B."

Q What kind of student were you? I didn't mean to interrupt.

A But at the time I went into Ms. Lipscomb's class, I had to put the laughing and joking and foolishness aside because I heard of her reputation for being a very demanding, no-nonsense

type of teacher and I could appreciate that, and I did appreciate it in the end.

Q Can you tell the jury about the specifics of being in her class?

A Well, I can remember that during the first day of class she would tell us about her expectations of us. She would tell us how she expected us to perform to the best of our ability at all times, that she would not necessarily be our friend, we would not be allowed to do back slapping and laughing and joking and giggling, that it was a very, very serious business.

That we should be honest in our efforts and we should be sincere in our efforts and take on the whole year with honesty and sincerity of effort. Well, we were in our class and we, being tenth

graders, she was trying to strike the fear of getting on the right track, but I do recall that first day with Ms. Lipscomb.

* * * *

[Chrystal Arlette Hill]

DIRECT EXAMINATION

BY MR. OBRION:

Q Please state your name?

A Chrystal Arlette Hill.

Q Could you describe in your own words how Ms. Lipscomb treated you and the other students in the class?

A Ms. Lipscomb is a very soft spoken woman, very feminine and very lady-like. She never raised her voice above a whisper, very quiet. She was respected by all of us. Now she's a

caring person, she really cares about students. She--I got a "D" for the whole year through the course and she often told me, "Chrystal, I know you can do better. I know you can do better," all the time encouraging us and pushing us to do our best.

* * * *

[Donna Taylor]

DONNA TAYLOR, being duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. OBRION:

Q Please state your name?

A Donna Taylor.

Q Could you describe for the jury, please, the relations between you and Ms. Lipscomb and how she treated the students in that class?

A Basically Ms. Lipscomb, she was a calm, quiet person and she was someone you always respected. There were certain things you could tell be her appearance, she was always well-dressed and everything.

She wasn't a teacher who wanted to be your friend because some teachers, they just want to talk about what they have been doing during the day and the night before. She was someone--when I came to her class you would get down to business, and you knew never to yell or do anything wrong in her class because she always gave you one of her looks.

Q What kind of looks would she give you?

A Her eyes would get big and you knew to sit in your seat and get quiet or stop whatever you were doing wrong.

Q How did you get along with that class?

A I got along really well. It helped me out a lot, especially in my freshman year at Norfolk State. It helped me in my first semester in critical analysis and that was reading and then we would write a theme around what the plot was and that type of thing that was in the stories; then my second semester we had to write term papers, and I had learned to do detailed term papers in Ms. Lipscomb's class.

Also my freshman year I had to take a civil service test for my job and I had Ms. Lipscomb's vocabulary, and I now have the job because I passed the test and this helped me a lot.

* * * *

[Catherine B. Scott]

CATHERINE B. SCOTT, being duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. OBRION:

Q You are Ms. Catherine Scott, is that correct?

A Yes.

Q Could you tell how Ms. Lipscomb treated you or the other students based on your observations of that class during the school year?

A Without Ms. Lipscomb I would have had a very difficult time with my preceding years at Thomas Jefferson. As far as behavior in the class, she followed the rules, she strived to get every student in her class to work to his or her potential.

Q Bren, I don't want to embarrass you but what did you finish in your class?

A I was 28th.

Q And were you awarded any kind of award at the end of school?

A Yes, I was. They recognized me because I was in the top four percent of my graduating class.

Q And are you planning to go to college?

A Yes, I am. VCU.

Q Could you describe Ms. Lipscomb's behavior in class in terms of help, relationship to students? How did she teach?

A Her relationship with students was excellent. When she returned graded papers there were always comments to the effect of why you received that grade,

detailed comments. When a student would--One of the major, I think, problems was the choice of words, word content. She did correct all words, said this was not quite right and when I asked what kind of word, I did not have to reiterate the comment on the paper, Ms. Lipscomb knew the comment and she was always there willing after class to help the students, to give them guidance.

Q How about tenth, eleventh and twelfth grade English classes? Did you put to use any of the things you learned from the ninth grade?

A In the tenth grade I had to fall back on Ms. Lipscomb's teaching. My tenth grade teacher would give us assignments, but she expected us to know it and without Ms. Lipscomb's thorough

teaching in the ninth grade, I would not have been able to pass tenth grade English.

* * * *

[Christina Kendall]

CHRISTINA KENDALL, being duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. OBRION:

Q You are Christina Kendall, is that correct?

A Yes.

Q Would you tell the jury, please, how Ms. Lipscomb treated you and the others in the class based on your experience?

A Ms. Lipscomb in every sense of the word was a professional. She let

you know right from the start what the rules were, exactly what she expected from us, how she expected us to work. She was very encouraging all year, always counseling, constantly pushing people to do their best.

I remember a time when she handed out test papers and she said, "Those of you who feel you could have done better on the test, please come back after school, I'm more than willing to spend time with you after school."

I had a job interview around the beginning of May with Philip Morris for this internship, and I was a little nervous about it because there were twelve people up for the position. And I went by to visit Ms. Lipscomb one day and she asked me about it and did I feel confident and I said, "I am not getting

my hopes up because there are so many people."

And she said, "You will get the job. There is just something about you and the way you carry yourself." And she just went on about how I was business-like, and she made me feel a whole lot better about the situation, boosted my self-confidence.

* * * *